

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

MICHAEL WINANS

## DEFENDANTS

FINANCIAL ASSET MANAGEMENT SYSTEMS, INC.

(b) County of Residence of First Listed Plaintiff CHESTER  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)  
CRAIG THOR KIMMEL, KIMMEL & SILVERMAN, P.C.  
30 EAST BUTLER PIKE, AMBLER, PA 19002  
PHONE: (215) 540-8888 EXT. 116

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395B) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. § 1692 et seq.

Brief description of cause:

FAIR DEBT COLLECTION PRACTICES ACT

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

08/14/2015

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

## UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 225 North Whitford Road, Exton, PA 19341

Address of Defendant: 70 Corporate Hills Drive, Suite 103, St. Charles, MO 63301

Place of Accident, Incident or Transaction: \_\_\_\_\_  
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases  
(Please specify) 15 U.S.C. § 1692 et seq.

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

(Please specify) \_\_\_\_\_

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, CRAIG THOR KIMMEL, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 08-14-15

Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 08-14-15

Attorney-at-Law

57100

Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

MICHAEL WINANS  
V.  
FINANCIAL ASSET MANAGEMENT  
SYSTEMS, INC.

CIVIL ACTION

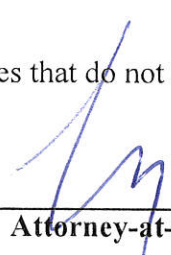
NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (X)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

08-14-15  
**Date**

  
**Attorney-at-law**

Plaintiff, Michael Winans  
**Attorney for**

215-540-8888 x 116

877-788-2864

kimmel@creditlaw.com

**Telephone**

**FAX Number**

**E-Mail Address**

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **FOR THE**  
3                                   **EASTERN DISTRICT OF PENNSYLVANIA**

4       MICHAEL WINANS,

5                                   Plaintiff

6                                   v.

7                                   FINANCIAL ASSET MANAGMENT )  
8       SYSTEMS, INC.,                                   )  
9                                   Defendant                                   )

Case No.:

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

**(Unlawful Debt Collection Practices)**

11                                   **COMPLAINT**

12                                   MICHAEL WINANS (“Plaintiff”), by and through his attorneys, KIMMEL  
13       & SILVERMAN, P.C., alleges the following against FINANCIAL ASSET  
14       MANAGMENT SYSTEMS, INC. (“Defendant”):

15                                   **INTRODUCTION**

16                                   1.     Plaintiff’s Complaint is based on the Fair Debt Collection Practices  
17       Act, 15 U.S.C. § 1692 *et seq.* (“FDCPA”).

18                                   **JURISDICTION AND VENUE**

19                                   2.     Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d),  
20       which states that such actions may be brought and heard before “any appropriate  
21       United States district court without regard to the amount in controversy,” and 28  
22       U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising  
23         
24         
25



1 under the laws of the United States. See Mims v. Arrow Fin. Services, LLC, 132  
2 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012)

3  
4 3. Defendant conducts business in the Commonwealth of Pennsylvania  
5 and therefore, personal jurisdiction is established.

6 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

7  
8 **PARTIES**

9 5. Plaintiff is a natural person residing in Exton, Pennsylvania 19341.

10 6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §  
11 1692a(3).

12 7. Also, Plaintiff is a “person” as that term is defined by 47 U.S.C. §  
13 153(39).

14 8. Defendant is a national debt collection company with corporate  
15 headquarters located at 70 Corporate Hills Drive, Suite 103, St. Charles, Missouri  
16 63301.

17 9. Defendant is a debt collector as that term is defined by 15 U.S.C. §  
18 1692a(6), and sought to collect a consumer debt from Plaintiff.

19 10. Also, Defendant is a “person” as that term is defined by 47 U.S.C.  
20 §153(39).

21 11. Defendant acted through its agents, employees, officers, members,  
22 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,  
23  
24  
25

1 representatives, and insurers.

2 **FACTUAL ALLEGATIONS**

3  
4 12. At all relevant times, Defendant was attempting to collect an alleged  
5 consumer debt from Plaintiff.

6 13. The alleged debt, a student loan, was primarily for personal, family,  
7 or household purposes.

8  
9 14. Plaintiff has a cellular telephone number that he has had for more  
10 than one year.

11 15. The phone number has been assigned to a cellular telephone service  
12 for which Plaintiff incurs a charge for incoming calls.

13  
14 16. Plaintiff never gave permission to Defendant to call his cellular  
15 telephone.

16 17. Plaintiff never furnished Defendant with his cell number and never  
17 authorized Defendant to call him.

18  
19 18. Beginning before May 2015, and continuing through June 2015,  
20 Defendant contacted Plaintiff on his cellular telephone in its attempts to collect a  
21 consumer debt.

22  
23 19. When contacting Plaintiff on his cellular telephone, Defendant used an  
24 automatic telephone dialing system and automatic and/or pre-recorded.

25 20. Defendant's telephone calls were not made for "emergency

1 purposes.”

2 21. Defendant’s automated messages identified itself as the caller and  
3 stated that it was calling about a “private business matter” or that its call was “an  
4 attempt to collect a debt.”  
5

6 22. Defendant called Plaintiff, on average, two (2) to five (5) times a day.  
7

8 23. It was annoying and harassing for Plaintiff to be called on his cellular  
9 telephone with such frequency.

10 24. Further, in its attempts to collect the alleged debt, Defendant also  
11 contacted Plaintiff’s parents and grandparents, which was embarrassing to Plaintiff  
12 for his family to know that there was a debt collector attempting to contact him.  
13

14 25. Finally, in its attempts to collect a debt, Defendant sent written  
15 correspondence to Plaintiff demanding payment of the debt, threatening to garnish  
16 his wages for non-payment of the debt.  
17

18 26. Upon information and belief Defendant’s threat to garnish Plaintiff’s  
19 wages was false and it did not intend to take the action threatened.

20 27. Defendant’s actions as described herein were made with the intent to  
21 harass, upset, deceive, and coerce payment from Plaintiff.  
22  
23  
24  
25

**DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES  
ACT**

28. In its actions to collect a disputed debt, Defendant violated the FDCPA in the following ways:

**COUNT I**

- a. A debt collector violates § 1692d of the FDCPA by engaging in conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.
- b. A debt collector violates § 1692d(5) of the FDCPA by causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.
- c. Here, Defendant violated §§ 1692d and 1692d(5) of the FDCPA when it repeatedly called Plaintiff on his cellular telephone as frequently as two (2) to five (5) times a day.

**COUNT II**

- a. A debt collector violates § 1692e of the FDCPA by using any false, deceptive, or misleading representation or means in connection with the collection of any debt.
- b. A debt collector violates § 1692e(4) of the FDCPA by representing or implicating that nonpayment of any debt will



1 result in the arrest or imprisonment of any person or the seizure,  
2 garnishment, attachment, or sale of any property or wages of  
3 any person unless such action is lawful and the debt collector or  
4 creditor intends to take such action.  
5

- 6 c. Here, Defendant violated §§ 1692e and 1692e(4) of the FDCPA  
7 by threatening to garnish Plaintiff's wages, when it did not  
8 intend to take the threatened action and legally could not take  
9 the threatened action.  
10

11 **COUNT III**

- 12 a. A debt collector violates § 1692f of the FDCPA by using unfair  
13 or unconscionable means to collect or attempt to collect any  
14 debt.  
15  
16 b. Here, Defendant violated § 1692f of the FDCPA by calling  
17 Plaintiff's parents and grandparents in its attempts to collect a  
18 debt from Plaintiff.  
19

20 **COUNT IV**

21 **DEFENDANT VIOLATED THE**  
22 **TELEPHONE CONSUMER PROTECTION ACT**

- 23 29. Plaintiff incorporates the forgoing paragraphs as though the same  
24 were set forth at length herein.  
25

1       30. Defendant initiated multiple automated telephone calls to Plaintiff's  
2 cellular telephone using a prerecorded voice and/or automated message.

3  
4       31. Defendant initiated these automated calls to Plaintiff using an  
5 automatic telephone dialing system.

6       32. Defendant's calls to Plaintiff were not made for emergency purposes.

7  
8       33. Defendant's calls to Plaintiff, in and after May 2015, were not made  
9 with Plaintiff's prior express consent, as Plaintiff had revoked any consent  
10 previously given to Defendant to call his cellular telephone.

11       34. Defendant's acts as described above were done with malicious,  
12 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights  
13 under the law and with the purpose of harassing Plaintiff.

14  
15       35. The acts and/or omissions of Defendant were done unfairly,  
16 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,  
17 lawful right, legal defense, legal justification or legal excuse.

18  
19       36. As a result of the above violations of the TCPA, Plaintiff has suffered  
20 the losses and damages as set forth above entitling Plaintiff to an award of  
21 statutory, actual and trebles damages.

22  
23       WHEREFORE, Plaintiff, MICHAEL WINANS, respectfully prays for a  
24 judgment as follows:

- a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
- b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- c. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3);
- d. All actual damages suffered pursuant to 47 U.S.C. § 227(b)(3)(A);
- e. Statutory damages of \$500.00 per telephone call pursuant to 47 U.S.C. § 227(b)(3)(B);
- f. Treble damages of \$1,500.00 per telephone call pursuant to 47 U.S.C. § 227(b)(3) or alternatively that amount for all calls made after Defendant was notified that they were calling the wrong person and wrong number;
- g. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3); and
- h. Any other relief deemed appropriate by this Honorable Court.

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, MICHAEL WINANS, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

Date: 08-14-15

By: CRAIG THOR KIMMEL  
PA. No. 57100  
Kimmel & Silverman, P.C.  
30 E. Butler Pike  
Ambler, PA 19002  
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